Attorney General
Betty D. Montgomery

October 17, 1996

Via Federal Express

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, CC Docket No. 95-115

Dear Mr. Caton:

Enclosed please find the original and seventeen copies of the **Policy Disconnection of Local Exchange Service for the Nonpayment of Toll Charges adopted by the Public Utilities Commission of Ohio** (PUCO), which is being submitted as a late-filed exhibit in the above-referenced matter. The revised Ohio disconnection policy was adopted on October 16, 1996 in PUCO Case No. 95-790-TP-COI. Ohio's Initial Comments in this docket included the PUCO Staff's proposed disconnection policy and the enclosed order reflects the final policy adopted by the PUCO. On June 14, 1996, the PUCO sent Ohio's original disconnection policy to the FCC. The attached policy was revised in response to Applications for Rehearing filed subsequent to the issuance of the original policy. The FCC should be aware of the Ohio disconnection policy when deciding this docket. A summary of the order is also enclosed for the FCC's convenience.

Please return a time-stamped copy to me in the enclosed self-addressed, postage prepaid envelope. Thank you for your assistance in this matter.

Respectfully submitted,

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Investigation into the Disconnection of Local Telephone Service for the Nonpayment of Charges Associated with Telephone Services Other Than Local Telephone Service.) Case No. 95-790-TP-COI

ENTRY ON REHEARING

The Commission finds:

(1) On June 12, 1996, the Commission issued a Finding and Order (the Order) in this matter by which, among other things, it adopted a new policy regarding disconnection of local telephone service. Upon the effective date of the new policy, unless the Commission orders otherwise, certain specified provisions of Chapter 4901:1-5, O.A.C., shall be suspended pending the completion of a soon-to-be-opened generic docket which will address the need for making wholesale revisions to the Commission's Minimum Telephone Service Standards (MTSS). The June 12, 1996 Finding and Order had originally established October 10, 1996 as the effective date of the new policy. However, by entry issued October 9, 1996, the Commission postponed the effective date of the new policy to a date to be determined by the Commission as set forth within this entry on rehearing.

(2) On July 12, 1996, Ameritech Ohio (Ameritech); AT&T Communications (AT&T); the city of Cleveland (Cleveland); The Edgemont Neighborhood Coalition, jointly with Appalachian People's Action Coalition (Edgemont/APAC)[1]; The Office of the Ohio Consumers' Counsel (OCC); and MCI Telecommunications Corp. (MCI) filed applications for rehearing of the Order, pursuant to Section 4903.10, Revised Code.

On July 22, 1996, four entities filed responses in opposition to certain of the submitted applications for rehearing. Specifically, Ameritech and GTE North Incorporated (GTE) filed responses in opposition to the applications for rehearing filed by

[1] APAC is a nonprofit advocacy organization for low-income residents in southern Ohio. Edgemont is a nonprofit advocacy organization for fixed-income and low-income residents in a neighborhood located in Montgomery County, Ohio.

Cleveland, OCC, and Edgemont/APAC. Meanwhile, responses in opposition to Ameritech's, AT&T's and MCI's applications for rehearing were filed by OCC and Edgemont/APAC.

(3) The applications for rehearing of the Order filed by Ameritech, AT&T, Cleveland, Edgemont/APAC, OCC, and MCI have been timely filed as required by Section 4903.10, Revised Code. On August 8, 1996, the Commission issued an entry which granted rehearing for the limited purpose of affording the Commission additional time in which to consider the issues raised on rehearing in this case. Pursuant to an entry issued on August 22, 1996, the Commission scheduled and held, on August 28, 1996, a public, transcribed, question and anwer session, for the purpose of eliciting responses from knowledgeable sources to questions the Commission had concerning issues presented on rehearing in this matter. The transcript from that session has been made a part of the record in this case. The Commission has considered the record as a whole in reaching its decision today, as set forth in this entry on rehearing.

(4) Ameritech argues that rehearing should be granted on four grounds: (1) the Order unreasonably imposes the same procedural requirements for blocking toll service in the event of nonpayment as apply to the disconnection of local service; (2) the Order unreasonably applies the Commission's new "no disconnect" policy to nonresidential/business customers (both Ameritech and AT&T have presented this argument as grounds for rehearing); (3) the Commission has acted unlawfully and beyond its statutory authority in attempting to revise one of its existing policies in a manner which will require telephone companies to change practices which conform to the policy being revised, without first applying the substantive and procedural safeguards established in Sections 4905.26 and 4905.381, Revised Code; and (4) the Commission unlawfully adopted the staff's recommendation despite the lack of record support for it, and despite the many detriments cited by opponents of the staff's recommendation.

In support of the first of its stated four grounds for rehearing, Ameritech submits that to require the same period and notification requirements for the blocking of toll service as apply for local service disconnection invites fraud and abuse by those who have no intention of paying their toll bills. Ameritech believes that the timing of notice requirements

established for local service disconnection are far too long to offer adequate protection to toll service providers considering that "access to toll service is, by definition, an extension of credit by the toll service provider". Ameritech proposes that notice be sent as early as the first day the bill is delinquent, with disconnection of access to toll to follow five days later if toll charges are not paid. Ameritech further proposes that disconnection without notice should be permitted where a pattern of toll fraud is evident, or where there is unusually increased usage.

As indicated, both Ameritech and AT&T argue that the Commission has acted unreasonably and unlawfully in deciding to apply its new disconnection policy to nonresidential/business customers. Both Ameritech and AT&T contend that since universal service objectives have application and must be accomplished, if at all, only within the realm of residential service, then, by definition, they cannot be enhanced by the Commission's application of its new disconnection policy to nonresidential/business customers. In addition, AT&T points out that 11 of 16 states with a "no disconnect" rule limit the application of that rule to only residential customers. According to AT&T, the Federal Communications Commission (FCC) has expressed that "households", which connotes residential rather than business customers, should be seen as the target beneficiaries of any "no disconnect" rule under current consideration in its CC Docket 95-115 docket.[2] AT&T claims it is unreasonable and unlawful to not make the same distinction the FCC and most other states have made. AT&T also implies that, compared to residential customers, business customers have a higher duty to police the unauthorized use of their phones and consequently, telephone service providers "should not be made to suffer" if a business fails to control its employees or invitees.

As regards its third ground, Ameritech submits that generic proceedings are an appropriate vehicle for use when "new issues arise ... and when there is a demonstrated public purpose to be served by the adoption of initial policies". However, according to Ameritech, once company practices are conformed to those policies, the Commission must follow a specified statutory process to change those practices. In this case,

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2 *In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network,* CC Docket 95-115, (Notice of Proposed Rulemaking adopted July 13, 1995 and released July 20, 1995.)

argues Ameritech, the Commission has reversed a long-standing Commission policy on disconnection and, in so doing, has effectively mandated a change in industry practices which conform with the "initial" policy now being reversed. The Commission may do so, says Ameritech, but only if it applies the substantive and procedural safeguards established in Sections 4905.26 and 4905.381, Revised Code. Ameritech submits that those safeguards were ignored in this case. This matter was not instituted in the manner provided in Section 4905.26, Revised Code. The Commission did not conduct a hearing, and did not find that the existing practice of disconnecting local service for the nonpayment of toll charges is unjust or unreasonable.

As regards its fourth ground, Ameritech submits that the Commission failed to give adequate consideration to arguments, made of record, showing the detrimental impact of the staff's proposal. Fundamentally, Ameritech's position rests on the idea that no good reason exists for departing from existing policy.

(5) Besides its already-noted arguments that the Commission's new disconnection policy should not apply to non-residential/business customers, AT&T, in its application for rehearing, submits that rehearing should be granted on three additional grounds. AT&T argues that the Commission unreasonably and unlawfully adopted its new disconnection policy: (1) without conclusive evidence that it would increase telephone subscribership; (2) without sufficient evidence that the technology required to implement it exists and is in place; and (3) in light of the fact that its implementation would require carriers to incur significant costs. As it happens, each of these arguments is also echoed in MCI's application for rehearing, described separately below.

As regards the first of the three grounds just mentioned, AT&T submits that the Order should be vacated because the Commission has not "substantiated" that any "causal correlation" exists between a "no disconnect" policy and a "household's decision to subscribe". Pertaining to its second ground, AT&T suggests that it is unreasonable for the Commission simply to assume that all local service providers can easily and inexpensively acquire and install toll blocking equipment at every switch. Concerning its third ground (which echoes Ameritech's first ground), AT&T acknowledges that, in the

Order, the Commission has already declared itself unconvinced by the arguments of record which were made to promote the notion that the cost of implementing the new policy would outweigh the benefits to be derived therefrom. Nevertheless, says AT&T, "the fact remains that service providers will have to spend large amounts of money for switch and system upgrades and in changing over and reprogramming billing systems." According to AT&T the new policy will cause increases in uncollectibles which "quite naturally" will be passed on to customers in the form of increased rates. To counteract this "certain" increase in uncollectibles, AT&T urges the Commission to allow carriers to employ "alternate risk mitigation measures", by which it means the "rendering of interim bills for high toll, usage limits, or a combined bill/disconnect notice".

(6) MCI, in its application for rehearing, argues that rehearing should be granted on three grounds: (1) the Commission erred by concluding (and there is no evidence to support the conclusion) that the new policy will enhance Ohio's ability to achieve universal service objectives; (2) the Commission erred by concluding that its new policy will create fairness and promote the state's telecommunications policy by leveling the playing field between local service providers and other companies, beyond the Commission's jurisdiction, who conduct billing and collection services; and (3) the Commission erred by concluding that its new disconnection policy would be a useful tool in fighting phone fraud propagated by a few unscrupulous information service providers.

In supporting the first of its stated three grounds for rehearing, MCI, as already noted above, has raised many of the same arguments as were also set forth in AT&T's application for rehearing. MCI emphasizes the notion that the new policy's implementation costs may cause local rates to increase at the expense of those customers who pay their bills for the real purpose of subsidizing those who do not. MCI submits that there is no evidence of record suggesting that current procedures for disconnection have resulted in any customers having their local service unfairly disconnected for nonpayment of legitimate toll charges. While claiming that "customers with a sincere desire to pay for the charges they incur are not harmed by" the Commission's existing disconnection policy, MCI also suggests that the Commission's new policy offers

"little additional protection" for customers who face temporary inability to pay undisputed phone charges.

As an alternative, MCI suggests that this Commission consider putting in place in Ohio a disconnection policy similar to that recently adopted by the Michigan Commission. Case No. U-11043, *In the Matter, on the Commission's Own Motion, to Establish Billing Standards for Basic Residential Telecommunications Service, Order Formally Adopting Administrative Rules,* June 18, 1996. Ameritech, too, has suggested that the Ohio Commission should follow in the direction of the recent Michigan disconnection decision. Unlike the Ohio Commission's new policy, Michigan's new policy will allow local service disconnection to remain tied to nonpayment of toll debt under certain instances, i.e., if the amount of the outstanding debt or the amount of time it remains outstanding exceeds standards established by Commission rule. The advantage of such an approach is, according to MCI, that it differentiates between customers who may have temporary cash-flow problems and those who fraudulently or recklessly incur charges with no intention of paying them.

In its application for rehearing, MCI cites telephone subscriber penetration statistics from other states which, while they were undoubtedly available, were never before introduced into the record. MCI claims that this "evidence" (MCI does not go so far as to claim it is new evidence) shows that the states with the highest penetration levels, and many who have experienced significant increased penetration for households at the poverty level, are the states without a "no disconnect" policy similar to that which the Commission has decided to adopt in this case.

In support of its second ground, MCI contends that, contrary to the Commission's suggestion otherwise, nothing in Section 4927.02, Revised Code, supports the notion that there is merit in moving the entire Ohio telephone industry into a position where its debt collection activities must comport with normal business practices generally.

In support of its third ground, MCI argues that, while misleading practices by some information service providers may be a problem, existing Commission regulations and carrier practices regarding disconnection already protect customers

from unwarranted disconnection. Claiming the record is devoid of evidence that local exchange service has been cut off for victims of fraudulent companies, MCI argues that the Commission's conclusion that its new disconnection policy would deter pay-per-call scams is unsupported by the record.

(7) One particular issue, namely whether local service providers may restrict access to all toll carriers or only to those to whom a customer is in arrears, is raised in each of the rehearing applications of Ameritech, Edgemont/APAC, OCC, and Cleveland. Ameritech suggests that the Commission should clarify that it is the blocking of access to all toll carriers which the new policy permits. Cleveland, OCC, and Edgemont/APAC each suggest that the necessary clarification should explain that it is only the blocking of access to a particular toll provider's service, for nonpayment of charges incurred for toll service provided by that toll provider, which is permitted. As regards this issue, Cleveland submits that local service providers have the technological capability to distinguish, for purposes of disconnection, the services of one toll provider versus another. Ameritech, however, points out that even "blanket" toll restriction is no panacea: other means, including use of 800 access, are available for making toll calls that are not impacted by the imposition of toll restriction technology. Ameritech requests Commission clarification that the scope of toll blocking contemplated by the new disconnection policy does not extend to the blocking of 800 service, even though access to toll service providers can be obtained through 800 service.

(8) The applications for rehearing of OCC and of Edgemont/APAC both raise the same issue of whether the new disconnection policy is unreasonable because, by defining local service as "everything but toll", it allows a local service provider to disconnect basic local exchange service for nonpayment of charges related to nonbasic service. Both OCC and Edgemont/APAC emphasize that, in this respect, the new policy fails to recognize the impact of, and does not adequately promote, competition emerging among providers of nonbasic local services. Edgemont contends that, especially since the cost of using some discretionary services is not obvious to a customer prior to use, a policy which holds provision of basic local service hostage to payment of nonbasic service charges will soon lead to loss of basic local service to many customers. OCC thinks that the Commission should mandate a "full

unbundling of consequences" within one year of the effective date of the new policy unless there is a definitive adverse cost-benefit analysis presented by the company. According to OCC, a "full unbundling of consequences" implies three things: (1) no denial of access to toll from one provider for nonpayment of toll owed to another provider; (2) no disconnection of basic local service for nonpayment of non-basis local service; and (3) no disconnection or denial of access by one provider for nonpayment of amounts owed to another provider.

Although it did not identify the issue as one presenting grounds for rehearing, Cleveland urges the Commission to, either in this case, or in another docket opened as part of the rehearing decision in this case, "look further into the issue" of whether to cut off the provision of basic local service for non-payment of discretionary services.

(9) The Commission stated, at page 16 of the Order, that it "would be open to the establishment of reasonable late payment charges for the toll and local portions of customer bills." OCC seeks further Commission clarification on this dictum, arguing that it was error for the Commission to encourage carriers to request approval of late payment charges without specifying how the charges should be structured or designating the process for approval of such charges. In its application for rehearing, OCC presents its own views regarding which rate structure and approval process should be considered appropriate. For example, OCC argues that a carrier that bills for other carriers should not be allowed to impose an additional late payment charge on service from a carrier that has, itself, imposed a late charge.

(10) Cleveland argues on rehearing that the Commission erred in adopting a policy which seems to allow a local service provider to charge a deposit for potential toll service for customers subscribing to both local and toll service. Cleveland says the Commission should require that anytime an initial deposit is required by the local service provider, that the deposit be based on an estimated (or actual) bill for local service only, rather than on a bill for local service in combination with toll service. The local provider that also provides toll service could also require a reasonable deposit where necessary, based on an estimated (or actual) bill for toll service provided by that local provider. However, Cleveland submits that no local service provider should be allowed to require a

deposit for estimated (or actual) bills for toll service provided by companies other than the local provider. Cleveland says that if toll providers need to require a deposit, they should be permitted to charge the deposit before the customer can enroll with the toll provider.

(11) There was one other issue raised on rehearing. Edgemont submits the Order is unjust, unreasonable, and unlawful because the Commission has "wrongly rejected the Commission staff's 'warm line' and indefinite 9-1-1 proposals" and has, as a result, failed "to preserve and advance universal service".

(12) In their July 22, 1996 Memoranda Contra, Edgemont/APAC and OCC submit that no new arguments and no new supporting facts regarding costs and benefits are advanced in the rehearing applications of Ameritech, AT&T, and MCI. They further submit that Ameritech and AT&T's have, once again, failed to provide evidence which supports, in any meaningful way, their already-considered contentions that the allegedly huge transitional costs and increases in uncollectibles now confronting them will inevitably result in rate increases for subscribers.

Edgemont claims that "obvious benefits" will derive from the Commission's new disconnection policy, which will accrue even to those of the rehearing applicants who now "grasp at every opportunity to claim burdens". In order to exemplify these benefits, Edgemont quotes from the Pennsylvania Commission's comment to the FCC, within CC Docket 95-115[3], which indicates that one effect of Pennsylvania's "no disconnect" policy has been to strengthen the ability of local service providers to keep customers on the network which has, in turn, resulted in an improvement in overall collections to some extent. It also cites hearing testimony provided by a NYNEX company official within a New York State Public Service Commission docket[4] indicating that New York's "no disconnect" policy was, at least in part, responsible for the company's extraordinary growth in the number of access lines served during 1994, which, in turn, contributed to revenue growth for the company during the period.

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3 See: CC Docket 95-115, Supplemental Reply Comments, November 21, 1995, at 4.

4 *In the Matter of the Proceeding on Motion of the Commission to Investigate Performance-Related Incentive Regulatory Plans for New York Telephone Company,* New York State Public Service Commission Case No. 92-C-0665, Minutes of evidentiary Hearing held November 22, 1994 .

Both Edgemont/APAC and OCC deny AT&T's allegation that the Commission has, in error, over-estimated the current state of toll blocking technology in Ohio. OCC finds it ironic and telling that no LECs (who should be most knowledgeable on the status of the technology) came forward to challenge the Order on this "technical feasibility" ground. Edgemont/APAC observes that there is no evidence of any technological problems in implementing the "no disconnect" rules in the 16 states in which they have already been adopted.

Both Edgemont/APAC and OCC dispute Ameritech's allegation that rehearing should be granted because of an alleged Commission failure, in this generic rulemaking procedure, to apply appropriate substantive and procedural safeguards, such as those found in Sections 4905.26 and 4905.381, Revised Code. Edgemont/APAC notes that no legal authority has been cited, and argues that neither does any legal authority exist, to support the alleged legal distinction which Ameritech has attempted to fashion as between the initial creation and the subsequent revision of Commission policies, within the context of generic proceedings. OCC finds it, again, ironic that Ameritech conveniently forgets to acknowledge that even the Commission's existing disconnection policy, which Ameritech urges the Commission to cling to, was, itself, adopted by the Commission in 1988 without a full evidentiary hearing and represents a change to Commission policy directives which were in effect prior to that time.

Both Edgemont/APAC and OCC urge the Commission to reject Ameritech's proposal to permit more expedited notice and shut-off procedures with respect to toll blocking than apply in local service disconnection situations. Both claim, in essence, that, in practice, Ameritech's proposals in this regard would probably create more problems and raise more questions than they would be intended to fix or answer. Both point out that the existing time frames, adopted by reference in the new policy, respect the vicissitudes of mail delivery, whereas Ameritech's proposed shorter time frames could leave some customers with virtually no notice. Both argue that Ameritech's proposal for immediate shut-off where, in the judgment of the company, there is a pattern of fraud, vests too much power and discretion in the single control of the company.

OCC denounces the proposition set out in MCI's rehearing application, that local service providers do not cut off local service in the case of nonpayment by victims of scams run by fraudulent information service providers. OCC says its own complaint experience (which, by all accounts, is matched by that of the Commission's Public Interest Center's experience with the same problem) shows that threats of disconnection, and actual disconnection, of local service for nonpayment of bills owed to unscrupulous information service providers continue.

Since it represents only residential subscribers, OCC chose not to address the issue of whether the new policy should apply to nonresidential/business customers. However, OCC did suggest that there is a need to reframe AT&T's argument, purporting to show that the new policy would harm universal service, that there has been no "demonstration of causation between a 'no disconnect' policy and a household decision to subscribe" to telephone service. According to OCC, the only appropriate issue is whether the policy will increase a household's ability to subscribe to telephone service, rather than its decision to do so.

(13) GTE, in its reply to the rehearing applications of Cleveland, OCC, and Edgemont/APAC, focuses on only three issues. First, in responding to a rehearing issue raised only by Cleveland, GTE submits that it is appropriate for a local service provider to require a reasonable deposit in connection with anticipated toll service, so long as the local service provider has purchased the accounts receivable of the toll provider in advance of the local service provider's billing to the customer.

Second, on the issue of whether the new policy should allow local service providers to block access to all toll providers or only to those to whom a customer owes an unpaid bill, GTE submits "selective" toll blocking is technically possible only in certain central offices. GTE also explains that even where "selective" blocking is imposed, the customer's 0+ and 10XXX access to the toll provider whose bill is unpaid would not be restricted.

Third, GTE attempts to counter the arguments by which OCC, Edgemont/APAC, and Cleveland have urged the Commission to disallow the disconnection of basic local service for failure to pay for non-basic services. GTE submits that the

position of these three rehearing applicants is basically paternalistic, suggesting that customers either do not know the cost of service or may not know how to restrict its use. According to GTE, there is no factual basis for this view, nor for the similar view that non-basic services are "pushed onto customers" by LEC sales forces. GTE submits that it is far more likely that such services are purchased knowingly by customers and, since such services are so closely related to local service, the Commission's decision to allow disconnection of basic local service for their nonpayment is correct.

(14) Ameritech, in its July 22, 1996 Memorandum Contra, argues that the Commission should not adopt any of the arguments or suggestions made in the rehearing applications of Cleveland, Edgemont/APAC, and OCC. Ameritech observes that neither Edgemont/APAC nor OCC has offered workable definitions by which to make the distinction they seek, as pertains to disconnection, between basic and non-basic local service. Meanwhile, observes Ameritech, Cleveland has acknowledged the difficulty in doing so and has not advocated that rehearing be granted on the ground that this distinction be now be made a part of the Commission's new policy.

Ameritech specifically states that "selective" toll restriction, by which it means the capability of a local service provider to distinguish and selectively restrict toll calling by carrier, is not technologically possible, even if it were desirable from a public policy standpoint. For example, Ameritech claims that its systems are not equipped to "reject" 1+ calls via AT&T, for example, but to "accept" those via MCI. Further, says Ameritech, it must be understood that toll restriction does not block the availability of carrier calling cards and does not block calls to 800 access from residence lines. Given that many entities, both public and private, purchase 800 service to enable their customers or constituents to reach them toll free, it would be inappropriate to require carriers, in a toll restriction mode, to block 800 service.

Ameritech opposes Cleveland's position that no local service provider should be permitted to charge and collect a deposit for toll service provided by another company. Ameritech submits that a local service provider should be permitted to do so as long as its actions are those of an agent acting on the toll provider's behalf, rather than of a local service provider acting on its own behalf.

Ameritech advocates Commission rejection of Edgemont/APAC's claim that the Commission action already taken with respect to the staff's "warm line" and extended 9-1-1 proposals has "failed to preserve and advance universal service". According to Ameritech, this ground for rehearing stands totally unsubstantiated inasmuch as no showing has been made, and none could be, that adoption of the staff proposals are essential to the advancement of universal service.

Finally, Ameritech argues that OCC is seeking to place unreasonable limitations on the imposition of late payment charges. Ameritech acknowledges that late payment charges for tariffed services should be tariffed. It submits that because, by their very design, late payment charges increase the costs only for those customers who pay late, but do not increase the cost of local service to customers generally, late payment charges do not constitute general rate increases and may be established outside the parameters of a general rate increase proceeding.

(15) The Commission finds that it will be appropriate and necessary to make certain revisions both to its June 12, 1996 Finding and Order in this case and also to its Statement of Policy as set forth on Page 22 of the Order. These revisions to both the Order and the policy statement are necessary in order to clarify the way in which the Commission intends for its new disconnection policy to be interpreted. The need for making these clarifications has come to light as a result of issues raised, or because of requests for clarification made, within the six rehearing applications, and the four responses thereto, which are now under consideration. Specifically, the clarifications pertain to the issue of whether local service providers may provide selective blocking services to toll service providers and, if so, then how selective blocking might affect our customer deposit policies pertaining to residential and nonresidential subscribers. The applications for rehearing filed by Cleveland, Edgemont/APAC, and OCC are granted only to the extent necessary to allow the Commission to make such clarifications within the rehearing entry.

Notwithstanding those policy clarifications which are fully set forth in this entry on rehearing, the Commission has now arrived at the determination, based upon review of all the

pleadings and the record as a whole, that none of the six submitted rehearing applications present any other grounds upon which the Commission will act to grant rehearing. Accordingly, the six submitted rehearing applications are each, subject to the policy clarifications set forth in this entry on rehearing, otherwise denied in their entirety. The Commission will, however, take this opportunity to review and discuss many of the major points raised by the six rehearing applicants, as well as by the four entities who filed responses to certain of the rehearing applications.

(16) The Commission rejects all four grounds for rehearing alleged by Ameritech. First, Ameritech argues that the same notice time frames of the existing disconnect policy should not be applied to the shut-off procedures for long distance because it "will invite fraud and abuse by those who have no intention of paying their toll bill." Ameritech points to a Michigan experience as anecdotal evidence of the difficulties which could arise in the absence of an expedited shut-off procedure. The Commission notes that, to the extent the time period for disconnection is a problem, it would be a problem under our current policy. Thus, like Edgemont/APAC, we find it interesting that Ameritech did not have any examples in Ohio to point to where a customer has taken advantage of the disconnection notice period to run up large toll bills. Aside from the fact that we are not persuaded that there is a real problem here, we are concerned that adopting Ameritech's proposal for a shorter disconnect notice would be akin to "throwing the baby out with the bath water". The existing time frames give the customers who have every intention of paying undisputed toll bills a chance to pay off their bills before losing service. To adopt an expedited policy to address problems which may be caused by the relatively few who intend to defraud the company, we believe, would unnecessarily penalize customers who have legitimate disputes and low-income customers trying to make ends meet. The Commission concludes, therefore, that imposing the same procedural requirements for blocking access to toll service as applies to disconnection of local service is reasonable.

Nevertheless, it should also be noted that our decision on this issue is based on the record before us in this case. Nothing we have stated here is intended to preclude anyone from raising the issue anew within the context of our upcoming MTSS

generic docket. The Commission will give careful consideration to any new or stronger arguments which would be made in that subsequent case to support the notion that shorter notice periods should apply in toll disconnection situations.

On Ameritech's second ground for rehearing, we do not discern any reason why our new disconnection policy should not apply to nonresidential/business customers. All that Ameritech and AT&T have suggested is that any application of the policy to such customers will have simply no impact on universal service, which is defined purely within the realm of residential service. As we stated on Page 21 of the Order, "the Commission will reiterate once more that the promotion of universal service goals is only one of the purposes which serve to support the action we are taking." Applying our new policy to nonresidential/business customers remains in keeping with our other purposes in this docket, such as to promote fundamental fairness and to create a vehicle for fighting phone fraud. These benefits, which are among the reasons why we have adopted our new disconnection policy, should accrue generally to all classes of service. Ameritech and AT&T have not shown how business customers would benefit if the new policy is not applied to them.

Ameritech's third ground for rehearing is, likewise, denied. Ameritech argues that the Commission cannot reverse its long-standing policy on disconnection under the guise of a rulemaking. Initially, we would just note that we find this argument interesting in light of the findings of our original order in April 1988. In that order, at page 8, we stated, "[O]ur principal reason for allowing disconnection for nonpayment of IXC toll charges concerns the status of current technology and the expense which would have to be incurred to enable local service to be provided while barring the provision of IXC toll service." The Commission went on to indicate its intent to monitor the economic and technological situation relative to LEC/IXC disconnection to determine whether substantial changes occur which would cause us to reach a different policy conclusion. Thus, we find it ingenuous, at best, for Ameritech to now argue that our change in the disconnect policy based on the change in technology is a complete reversal of policy. That aside, Ameritech's contention that the Commission needs to invoke Section 4905.26 and 4905.381, Revised Code, before proceeding, in a generic case, to review and revise any of its existing policies is simply wrong.

Ameritech itself acknowledges that these statutes are aimed at company-specific practices and do not set forth the procedural requirements for establishing rules and policies for the industry. Ameritech has cited no legal authority in support of its contention, apparently because none exists. The Commission has appropriately acted in a generic policy-making capacity in this case, employing quasi-legislative, as opposed to quasi-adjudicative, procedures which were followed with due regard for notions of fundamental fairness. Among other things, this means that real stakeholders in the matters under consideration have been granted full and fair opportunities to be heard in this case.

The Commission sees no merit in Ameritech's claim that the Commission has unlawfully adopted the staff's recommendation with no record support for it, and in spite of the many detriments cited by opponents of the staff's recommendation. There can be no doubt but that the Commission has not adopted its staff's proposal in this case. Both within our June 12, 1996 order, and now, again on rehearing, the Commission has chosen to modify substantially the staff's proposal based on our review of the record as a whole. That record has developed significantly since the time when the staff's proposal was issued. Our June 12, 1996 decision to modify substantially the staff's proposal was, in fact, based on comments of record which were filed in response to that staff proposal. In reaching our decision today, we have relied not only upon all of the rehearing pleadings, and the entire record which led up to their filing, but also upon the additional information gathered of record in the context of our August 28, 1996 fact finding conference. We take this opportunity to note that the holding of such a conference is in keeping with the concept of a Commission-ordered investigation, and also that no one has filed a pleading raising any objection to our use of that process in this case.

(17) The Commission rejects all four grounds for rehearing alleged by AT&T. First, the Commission has just indicated above why it should, and will, apply its new disconnection policy to both residential and nonresidential/business customers.

Second, AT&T presents no authority for its proposition that what is required before the Commission could lawfully adopt its new disconnection policy is "conclusive evidence that a

'no disconnect policy' increases telephone subscribership". Indeed, AT&T misses the point. The issue is not whether more people will subscribe to telephone service because of the new policy. Rather, the issue is whether the new policy will result in more people staying on the network who otherwise might be forced off. It is indisputable that a policy which does not permit disconnection of local service for nonpayment of toll service will certainly result in more people being able to stay on the local network. Even Ameritech recognized that "substantial phonelessness is caused by high toll ... bills."[5]

Third, contrary to AT&T's claim, the record supports the Commission's conclusion that the current status of toll restriction technology, and its deployment throughout Ohio, is sufficient to support implementation of the new disconnection policy which the Commission has adopted. Even Ameritech, the only LEC to file for rehearing, did not challenge our order on that basis. Our new disconnection policy is, in part, based on a recognition of the fact that, so long as Automatic Number Identification (ANI) information is passed to them by the local service provider at the time the toll call is attempted, interexchange carriers are currently capable, from a technical standpoint, to deny toll service to their nonpaying customers without need of any other technical support being provided by the local service provider. This conclusion is supported by statements provided by AT&T within the course of our August 28, 1996 fact finding conference in this docket (Tr. 3-9).

There is also no merit in AT&T's only other remaining allegation of error: that the Commission should not have adopted its new policy given the fact that significant implementation costs are involved. As AT&T itself acknowledges, the Commission's decision was based on a cost/benefit analysis conducted in reference to the record as a whole in this case. AT&T had ample opportunity to submit whatever cost information it wished for the Commission to consider in the process of completing that cost/benefit analysis. It should not be heard to complain now simply because it is unhappy with the results which followed from the Commission's review of the whole record.

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5 Ameritech, *Interim Transition Issues for Universal Service in Ohio*, August 28, 1995, at 5.

(18) The Commission rejects all three grounds for rehearing alleged by MCI. Since MCI's first allegation of error is substantially similar to the "universal service" arguments raised by AT&T, which we have just fully addressed above, our response to those commonly-shared arguments is the same in each instance and, therefore, need not be repeated once again at this point.

Second, MCI has missed the point in arguing that Section 4927.02 Revised Code, provides no support to the Commission in its expressed desire to "restore fairness". It is true that the Commission expects (and has so stated in the Order) that its new disconnection policy will help to create a "level playing field" as between local service providers and other entities who provide telephone billing and collection service by forcing the former to begin operating under "normal business practices". However, equally important will be the restoration of fairness which the Commission expects will befall local service subscribers themselves, once the Commission's new policy is in place and such customers are no longer threatened with disconnection of the local service which they, perhaps, always have been ready, willing and able to pay for. It is this restoration of fairness, and not necessarily the fact that billing and collecting agents of all stripes will soon begin competing on a level playing field, which the Commission has found to be in keeping with Ohio's telecommunications policy as stated in Section 4927.02, Revised Code.

Third, contrary to the position espoused on rehearing by MCI, the Commission is justified in relying on the comments provided in this case by the Ohio Attorney General (OAG) in concluding that its new disconnection policy may be expected to deter pay-per-call scams perpetrated by unscrupulous information service providers and others. The Commission is not prevented from gleaning from the experiences of its own Public Interest Center, as well as from the face of the OAG's comments, a certain knowledge that the threatened and actual disconnection of local service to customers for nonpayment of such fraud-ridden billed charges has lingered as a problem for too long.

(19) The Commission rejects Ameritech's interpretation that, under the Commission's new policy, a local service provider is permitted to block a customer's access to the services of all

toll carriers for nonpayment of toll debt owed to any particular toll service provider. We do not intend for our toll disconnection policy to be interpreted as one which would allow for local service providers to engage in "universal" toll blocking for the nonpayment of toll debts owed to any one particular toll provider. Rather, we intend for it to be interpreted in a manner closer to that described in the rehearing arguments of Cleveland, Edgemont/APAC and OCC, i.e., that a local service provider should be permitted to block a customer's access to the services of any particular toll service provider for nonpayment of a debt owed to that particular toll service provider. However, so stated, even this interpretation is too broad. Therefore, we find it necessary now to revise and, in doing so, to clarify that sentence[6] within our policy statement which originally said no more than that "[l]ocal service providers shall be permitted to disconnect a customer's access to toll service for nonpayment of charges incurred for toll service." The rehearing applications of Cleveland, Edgemont/APAC and OCC are each granted only to the extent necessary to enable the Commission to make these clarifying revisions.

The Commission believes that local service providers should be required to provide selective toll blocking service to all toll service providers, on a nondisciminatory basis, pursuant to tariff. This results in a need for the Commission to make several clarifying revisions to the Order and to our policy statement.

First, requiring the offering of selective toll blocking service by local service providers on a nondiscriminatory basis to all toll service providers eliminates any need to distinguish between toll providers on the basis of whether they rely on a local service provider (to whom they sell their accounts receivable) as their principal billing agent. Accordingly, that sentence which had incorporated this distinction into the Commission's new disconnection policy, namely, the second sentence of the first paragraph of its Statement of Policy, as it appeared on Page 22 of the Order, will be eliminated.

Second, those provisions of the MTSS which incorporate this same distinction into the Commission's deposit policies for residential and nonresidential service subscribers, should be

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6 See: The third pargraph of our "Statement of Policy" as it appears on page 22 of the Order.

temporarily suspended, for reasons further described in Finding 23, below.

Third, the Commission also finds it necessary to revise, for purposes of clarification, the third paragraph of its Statement of Policy, as it appears on Page 22 of the Order. Prior to revision, that paragraph merely stated that "local service providers shall be permitted to disconnect a customer's access to toll service for nonpayment of charges incurred for toll service". As revised, this paragraph should be replaced in its entirety with the following language:

> Local service providers shall be required to provide selective toll blocking service to all toll service providers, on a nondiscriminatory basis, pursuant to tariff. Local service providers who also provide toll service, when they disconnect their own toll service customers for nonpayment of toll service charges, must utilize the same tariffed selective toll blocking service which they offer to all toll service providers. Absent Commission approval pursuant to the limited waiver process established in Case No. 95-790-TP-COI, no local service provider may be permitted to "universally" block access to all toll service for the nonpayment of toll charges owed to any particular toll service provider or group of toll service providers. Neither purchase of the toll provider's accounts receivable by the local service provider, nor a requirement that the local service provider shall be the billing and collection agent for the toll provider, shall be established as a necessary precondition imposed by the local service provider in connection with its tariffed selective toll blocking service offering.

Fourth, the Commission also finds it necessary to revise, for purposes of clarification, the sixth paragraph of its Statement of Policy, as it appears on Page 23 of the Order. As we have already noted, upon the effective date of our new disconnection policy, no longer will any distinction be made, within either our new disconnection policy or within the MTSS rules, between those toll service providers who do and those who do not utilize local service providers as their billing and

collection agents. This result, in turn, especially when considered in conjunction with the accomplishment of our overall objective of separating toll service disconnection from non-toll service disconnection, lays bare the need for establishing a regulatory policy designed to protect subscriber access to toll service in much the same way as customer access to local service is currently protected under our MTSS rules. The establishment of such a policy presents a variety of issues which we expect to address in more depth and in a more final way within the course of our deliberations in the upcoming MTSS generic docket. For now, however, our immediate goal is simply to implement an interim policy which effectively puts all toll service providers on notice that they have an affirmative duty to establish, before the effective date of our new disconnection policy, billing, credit/deposit, and disconnection policies relating to the provision of toll service which, except as otherwise specified in this docket, parallel those relating to the provision of local exchange service which must be established by local service providers in order to comply with our MTSS rules. Towards this end, the sixth paragraph of our Statement of Policy, as it appears on page 23 of the Order, will be revised to read:

> The procedural and substantive safeguards which are afforded to applicants for local exchange service and to subscribers of local exchange service under Chapter 4901:1-5, O.A.C., as pertains to billing, establishing credit/deposits, and to disconnection, shall also inure to applicants for toll service and to subscribers of toll service, regardless of whether such toll service is provided by a local exchange company or an interexchange carrier. The requirement that the billing, credit/deposit, and disconnection standards now applicable to the provision of local exchange service by local exchange companies should, for now, also have equal application to the provision of toll service by all toll service providers amounts to an interim policy which shall remain in place, unless the Commission orders otherwise, pending the Commission's ultimate disposition of its forthcoming generic docket addressed to the need for wholesale revisions to Chapter 4901:1-5, O.A.C.

(20) The Commission will deny rehearing and reject the arguments made by Edgemont/APAC and OCC that the Commission has erred by failing to make any distinction between basic and nonbasic services as pertains to the manner in which "local service" shall be defined in the context of our new disconnection policy. We believe that those discretionary services which fall within our policy's definition of local service are so closely associated with local service that they are generally understood by phone customers as being part and parcel to local service. If any significant change in this understanding develops in the future, as local competition expands, we can always revisit the issue. Additionally, we believe this approach is simple to understand and easy to administer and enforce.

It should be noted that an existing Commission rule, namely Rule 4901:1-15-32(D), O.A.C., prohibits the disconnection of local service for nonpayment of nonregulated service charges, such as those for cable TV services. The continued applicability of this provision is not at issue in this case. Likewise, the Commission's established policy pertaining to disconnection of 900 and 976-like services still applies, unaffected by today's decision in Case No. 95-790-TP-COI.

(21) Except to the extent indicated in Finding (19) above, the Commission rejects all three grounds for rehearing alleged by OCC. Two of these grounds have already been fully addressed in Findings (19) and (20), above. The Commission finds OCC's third allegation of error also to be without merit. It was not error for the Commission to express in the Order that it is "open to the establishment of reasonable late payment charges for the toll and local portions of customer bills." Nor, in doing so, was the Commission under any duty to use the Order, or even this docket at all, as the vehicle by which to define all the particular substantive and procedural requirements entailed in the establishment of late payment charges.

(22) Except to the extent indicated in Finding (19) above, the Commission rejects all three grounds for rehearing alleged by Edgemont/APAC. Two of these grounds have already been fully addressed in Findings (19) and (20). The Commission finds Edgemont/APAC's third allegation of error also to be without merit. Edgemont/APAC's suggestion that Commission adoption of the staff's "warm-line" and extended 9-1-1 proposals is essential to the advancement of universal service

is most likely an overstatement. In any event, as indicated at page 14 of the Order, the Commission has already indicated its willingness to reexamine the merits of those proposals in a different context at some future time.

(23) Finally, as has already been addressed in Finding (19), the Commission will, to a limited extent, grant rehearing on the first of two grounds for rehearing alleged by Cleveland. The offering of selective toll blocking service by local service providers on a nondiscriminatory basis to all toll service providers eliminates any need to distinguish between toll providers on the basis of whether they rely on a local service provider (to whom they sell their accounts receivable) as their principal billing agent. Consequently, those provisions of the MTSS which incorporate this same distinction into the Commission's deposit policies for residential and nonresidential service subscribers should be temporarily suspended. Specifically, the provisions to be temporarily suspended are the second sentence of Rule 4901:1-5-25(A), O.A.C., the third sentence of Rule 4901:1-5-25(J), O.A.C., and the last sentence of Rule 4901:1-5-26(E), O.A.C.

As regards the second grounds for rehearing alleged by Cleveland, namely the proposition that local service providers should not be permitted to assess deposits for other service providers besides themselves, rehearing is denied. The Commission finds no reason for precluding a local service provider from enforcing or carrying out the billing, credit/deposit, and disconnection policies of a separate toll service provider, as they pertain to services provided by that separate toll service provider, so long as the local service provider is authorized to do so pursuant to a contract entered into between the local service provider and the involved, separate toll service provider.

Deposits which pertain to the provision of local service shall be assessed separately from deposits which pertain to the provision of toll service, regardless of whether the toll deposit is being assessed by the local service provider on its own behalf as the provider of both local and toll service, or on behalf of a separate toll service provider who has duly authorized the local service provider to enforce or carry out the separate toll service provider's toll deposit policies. During the term of the Commission's interim policy described in Finding (19) of this entry on rehearing, all deposits, whether assessed for only

local service, for toll service, or for local service in combination with toll service, shall be assessed in conformity with all nonsuspended provisions of the Commission's MTSS rules concerning deposits, namely Rules 4901:1-5-25 and 4901:1-5-26, O.A.C.

(24) With respect to any and all other issues raised in the applications for rehearing, to the extent they have not otherwise been fully addressed in this entry on rehearing, rehearing is denied.

(25) For purposes of clarification and ease of reference, the Commission has set forth, as Appendix A to this entry on rehearing, a new, complete version of the Statement of Policy, elsewhere referred to herein as the new disconnection policy, which the Commission is adopting in this case. Compared to the earlier policy statement which appeared on Pages 22 and 23 of the Order, this newer statement now reflects those clarifications and modifications which the Commission has decided to make as a result of its consideration of all issues raised on rehearing in this case.

Appendix B to this entry on rehearing sets forth a list of the existing MTSS provisions which will be suspended, as of the effective date of our new disconnection policy, pending final disposition of the MTSS generic docket. The list sets forth a brief explanation of the reason why the Commission believes such suspension is necessary.

(26) Various entities have filed temporary waiver requests in this case.[7] The basis for the request is essentially similar in each instance: each entity filing a request has set forth reasons why it considers itself unable to comply with all or a portion of the Order as of its scheduled October 10, 1996 effective date; each describes the steps the requesting party is taking in order to bring itself into full compliance with the Order at the earliest possible date; each sets forth a date on which it expects to come into full compliance with the Order; and, finally, each

[7] Temporary waiver reqests in this case were filed: on September 5, 1996 by The Columbus Grove Telephone Company; on September 6, 1996 by Century Telephone of Ohio, Inc. and by The Conneaut Telephone Co.; on September 10, 1996 by Ameritech Ohio and by GTE North Incorporated; on September 11, 1996 by AT&T Communications of Ohio; and on September 23, 1996 by Alltel Ohio and Western Reserve Telephone Company. Responses to these waiver requests were filed by Edgemont Neighborhood Coalition on September 24, 1996 and by OCC on September 26, 1996, and October 2, 1996. Ameritech replied to these responses on October 3, 1996.